

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: EpiPen Direct Purchaser Litigation

(This Document Applies To All Cases)

Court File No. 20-cv-827 (ECT/JFD)

**DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

Defendants Mylan Inc., Mylan Specialty L.P., CVS Health Corporation, CaremarkPCS Health L.L.C., Caremark L.L.C., Caremark Part D Services, L.L.C., Caremark Rx L.L.C., Express Scripts Holding Company, Express Scripts, Inc., Medco Health Solutions, Inc., UnitedHealth Group Incorporated, UnitedHealthcare, Inc., United HealthCare Services, Inc., Optum, Inc., OptumRx Holdings, LLC, and OptumRx, Inc. (collectively "Defendants"), by and through their undersigned counsel, hereby move to dismiss the claims asserted against them in the First Amended Consolidated Class Action Complaint by Plaintiffs Rochester Drug Co-Operative, Inc. and Dakota Drug, Inc. (collectively "Plaintiffs"), and all others similarly situated. Specifically, Defendants seek dismissal of (1) Counts I and II, as to all Defendants, to the extent they rely on predicate acts of (i) Travel Act violations predicated on violations of the Anti-Kickback Statute and (ii) violations of West Virginia Code § 47-11A-3; (2) Count IV as to all Defendants; and (3) all claims against Defendants CVS Health Corporation, Express Scripts Holding

Company, UnitedHealth Group Incorporated, United HealthCare, Inc., United HealthCare Services Inc., Optum, Inc., and OptumRx Holdings, LLC.¹

This Motion is made pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) on the ground that Plaintiffs have failed to state a claim upon which relief can be granted and have failed to plead fraud with particularity. This Motion is supported by all files, records, and proceedings herein, including Defendants' supporting memorandum of law.

¹ To preserve issues for appellate review, Defendants incorporate by reference all the arguments in their original motions to dismiss and related briefing. ECF Nos. 85, 87, 90, 92, 108, 109.

Dated: December 6, 2021

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